IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8685 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMZAD FAZAL DALAL S/O. FAZAL SATTAR DALAL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 8685 of 2004

MR PRAVIN GONDALIA ON BEHALF OF
YOGESH S LAKHANI for Petitioner No. 1
MR MM TIRMIZI for Respondent No. 1,2
MS HANSA PUNANI ASST.PUBLIC PROSECUTOR for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 10/12/2004

ORAL JUDGEMENT

Heard Mr.Pravin Gondalia on behalf of Mr.YS

Lakhani, learned counsel for the petitioner, Mr.MM Tirmizi, learned counsel for the respondent Nos.1 and 2 and Ms.Hansa Punani, learned Assistant Public Prosecutor for respondent No.3 at length.

2. By way of filing this petition invoking jurisdiction of this Court under Article 226 read with Articles 21 and 22 of the Constitution of India, the petitioner - detenu has challenged the order of detention passed against the petitioner detenu dtd.31/5/2004 by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue - respondent No.2 herein, in exercise of powers under sec.3 of the COFEPOSA Act, with a view to preventing him from smuggling goods in future, copy of which is annexed at Annexure-A to the petition. Pursuant to the said detention order, the petitioner has been detained in Central Prison, Sabarmati, Ahmedabad. Along with the impugned detention order, the detaining authority has also supplied grounds of detention, copy of which is annexed with the petition at Annexure-B to the petition along with documents upon which reliance has been placed by the detaining authority, copy of which is produced at Annexure-C to the petition.

3. The petitioner has challenged the impugned detention order on various grounds as set out in the memo of petition. It is mainly argued by the learned counsel for the petitioner that the detaining authority has supplied copies of more than 10,900 documents rely on which the detaining authority has passed the impugned detention order. He has further argued that practically the detaining authority had no time to go through the 10,900 documents supplied to the petitioner. In support of his contention, he has drawn my attention to the copies of the documents at Annexure-C. Arguing the same, learned counsel for the petitioner has mainly contended that the detaining authority has passed the impugned order of detention without verifying and without going through more than 10,900 documents. He has further argued that out of more than 10,900 documents, number of documents are illegible which have prevented the petitioner to make an effective representation. He has further argued that the representation made on behalf of the detenu against the impugned detention order has not been considered by the concerned authority promptly and there is inordinate delay in deciding the representation which is illegal as per the settled law. Arguing the same, he has prayed to quash and set aside the impugned order of detention and the petitioner detenu may be ordered to be released forthwith.

4. He has further argued that one of the co-detenu had preferred Special Civil Application No.8224 of 2004 before this Court challenging the detention order passed against him under the provisions of COFEPOSA Act, and this Court, after hearing both the sides and considering the material on record, has allowed the said petition by quashing and setting the order of detention impugned in the said petition and directing to release the petitioner of the said petition forthwith. He has also submitted that in the said reasoned order, this Court has held that the impugned order of detention is not sustainable and there is reach of Article 21 and 22 of the Constitution of India. He has, therefore, argued that on the ground of parity also, this petition is required to be allowed.

5. Having heard the learned counsel for the respective parties and considering the material on record and considering the fact that the documents on which the detaining authority has relied upon for passing the impugned detention order against the petitioner and the documents relying on which detention order was passed against the co-detenu of the petitioner who had preferred Special Civil Application No.8224 of 2004 are materially and substantially similar and the documents which were illegible in the lists of documents in Special Civil Application No.8224 of 2004 are also illegible in this petition and keeping in mind the fact that this Court has quashed and set aside the order of detention passed by the detaining authority against co-detenu of the present petitioner, while passing reasoned order in Special Civil Application No.8224 of 2004, it is not required to go into the details and record same finding, with a view to avoid futile exercise. This petition is required to be allowed on the same grounds on which Special Civil Application No.8224 of 2004 has been allowed by this Court. However, the petitioner is required to be directed to cooperate with the investigating agency in the investigation. I am told that the statement under sec.108 of the Customs Act of the petitioner has been recorded, however, the presence of the petitioner may be required by the investigating agency to comfort any other witness in presence of the petitioner or for recording statement / further statement after examining the witness that may be called by the Department. The petitioner has given assurance through his advocate that the petitioner will give full cooperation with the investigation.

In view of the above the petitioner is directed to give cooperation in the investigation and he shall remain present before the investigating agency as and

when so directed by the investigating agency. The directions issued by this Court to the detenu of Special Civil Application No.8224 of 2004, shall binding to the detenu of this petition.

6. In the result, the petition is allowed. The impugned order of detention bearing F.No.673/6/2004-Cus.VIII dated 31/5/2004 passed by the respondent No.2 - The Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, against the detenu namely under the provisions of Sec.3 of the COFEPOSA Act is hereby quashed and set aside. The petitioner-detenu namely AMZAD FAZAL DALAL is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. D.S. Permitted.

As earlier the request made by Mr.Tirmizi, learned Addl.Standing Counsel for the respondent Nos.1 and 2 herein, for suspension of the judgement and order passed by this Court in Special Civil Application No.8224 of 2004 dtd.9-10/12/2004 has not been accepted, the similar request made by Mr.Tirmizi, for suspension of this order cannot be accepted for the same reasons and hence the request is hereby turned down.

Copy of the oral judgement passed by this Court in SCA No.8224 of 2004 dtd.9-10/12/2004 be issued along with writ of this oral judgement.

(C.K. BUCH, J.)

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